

# PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

# PCT

To:

SIM & MCBURNEY  
Attn. McManus, Kimberley  
330 University Avenue  
6th Floor  
Toronto, Ontario M5G 1S7  
CANADA

RECEIVED

JUL 23 2004

SIM & MCBURNEY  
SMA, HUGHES, ASHTON & MCKAY

NOTIFICATION OF TRANSMITTAL OF  
THE INTERNATIONAL SEARCH REPORT AND  
THE WRITTEN OPINION OF THE INTERNATIONAL  
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Date of mailing  
(day/month/year)

22/10/2004

Applicant's or agent's file reference

9577-41KAM

FOR FURTHER ACTION

See paragraphs 1 and 4 below

International application No.

PCT/CA2004/000825

International filing date  
(day/month/year)

03/06/2004

Applicant

ODIDI, Isa

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

**Filing of amendments and statement under Article 19:**

The applicant is entitled, if he so wishes, to amend the claims of the International Application (see Rule 46):

**When?** The time limit for filing such amendments is normally 2 months from the date of transmittal of the International Search Report; however, for more details, see the notes on the accompanying sheet.

**Where?** Directly to the International Bureau of WIPO, 34 chemin des Colombettes  
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 740.14.35

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.

3. ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.  
☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

**4. Reminders**

Shortly after the expiration of 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within 19 months from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later); otherwise, the applicant must, within 20 months from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of 30 months (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/B/301 and, for details about the applicable time limits, Office by Office, see the PCT Applicant's Guide, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the International Searching Authority

European Patent Office, P.B. 5818 Patentlaan 2  
NL-2280 HV Rijswijk  
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,  
Fax: (+31-70) 340-3016

Authorized officer

Eva Boháčová



## NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the PCT Applicant's Guide, a publication of WIPO.

In these Notes, "Article", "Rule", and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions respectively.

### INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only.

#### What parts of the international application may be amended?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

#### When?

Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

#### Where not to file the amendments?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 45.2).

Where a demand for international preliminary examination has been/is filed, see below.

#### How?

Either by cancelling one or more entire claims, by adding one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Administrative Instructions, Section 205(b)).

The amendments must be made in the language in which the international application is to be published.

#### What documents must/may accompany the amendments?

##### **Letter (Section 205(b)):**

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.

## NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

The following examples illustrate the manner in which amendments must be explained in the accompanying letter:

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:  
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers; claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:  
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:  
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or  
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:  
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

### "Statement under article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

It must be in the language in which the international application is to be published.

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)".

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

### Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the same time of filing the amendments with the International Bureau, also file a copy of such amendments with the International Preliminary Examining Authority (see Rule 62.2(a), first sentence).

### Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, where upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Office, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see Volume II of the PCT Applicant's Guide.

## PATENT COOPERATION TREATY

## PCT

## INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 9577-41KAM	<b>FOR FURTHER ACTION</b> see Form PCT/ISA/220 as well as, where applicable, item 5 below.	
International application No. PCT/CA2004/000825	International filing date (day/month/year) 03/06/2004	(Earliest) Priority Date (day/month/year) 26/06/2003
Applicant ODIDI, Isa		

This International Search Report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This International Search Report consists of a total of 6 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

## 1. Basis of the report

- a. With regard to the language, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ The international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

- b. ☐ With regard to any nucleotide and/or amino acid sequence disclosed in the international application, see Box No. I.

2. ☒ Certain claims were found unsearchable (See Box II).3. ☐ Unity of invention is lacking (see Box III).

## 4. With regard to the title,

☐ the text is approved as submitted by the applicant.

☒ the text has been established by this Authority to read as follows:

PROTONE PUMP-INHIBITOR-CONTAINING CAPSULES WHICH COMPRISE SUBUNITS DIFFERENTLY STRUCTURED FOR A DELAYED RELEASE OF THE ACTIVE INGREDIENT

## 5. With regard to the abstract,

☒ the text is approved as submitted by the applicant.

☐ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

## 6. With regards to the drawings,

- a. the figure of the drawings to be published with the abstract is Figure No. \_\_\_\_\_

☐ as suggested by the applicant.

☐ as selected by this Authority, because the applicant failed to suggest a figure.

☐ as selected by this Authority, because this figure better characterizes the invention.

- b. ☐ none of the figures is to be published with the abstract.

## A. CLASSIFICATION OF SUBJECT MATTER

IPC 7 A61K9/48 A61K9/28 A61K9/50 A61K31/44  
A61P1/04

According to International Patent Classification (IPC) or to both national classification and IPC

## B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

IPC 7 A61K

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the International search (name of data base and, where practical, search terms used)

EPO-Internal, PAJ, WPI Data, BIOSIS, EMBASE, CHEM ABS Data

## C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	EP 1 017 370 A (NYCOMED DANMARK A S) 12 July 2000 (2000-07-12) claims 1-48 paragraphs '0085! - '0132! examples 7-14 -----	1-48
A	WO 03/009846 A (UNIV MISSOURI) 6 February 2003 (2003-02-06) claims 1-35 examples 1-10 page 23, line 10 - page 29, line 22 -----	1-48
A	US 2002/045646 A1 (PHILLIPS JEFFREY O) 18 April 2002 (2002-04-18) claims 1-16 paragraphs '0077! - '0137! ----- -/--	1-48

☒ Further documents are listed in the continuation of box C.☒ Patent family members are listed in annex.

## \* Special categories of cited documents:

\*A\* document defining the general state of the art which is not considered to be of particular relevance

\*E\* earlier document but published on or after the international filing date

\*L\* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

\*O\* document referring to an oral disclosure, use, exhibition or other means

\*P\* document published prior to the international filing date but later than the priority date claimed

\*T\* later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

\*X\* document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

\*Y\* document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.

\*S\* document member of the same patent family

Date of the actual completion of the international search

13 October 2004

Date of mailing of the international search report

22/10/2004

Name and mailing address of the ISA

European Patent Office, P.B. 5818 Patentlaan 2  
NL - 2280 HV Rijswijk  
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,  
Fax (+31-70) 340-3016

Authorized officer

Schifferer, H

## C.(Continuation) DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 6 489 346 B1 (PHILLIPS JEFFREY OWEN) 3 December 2002 (2002-12-03) claims 1-23 examples 6,7,9 column 12, line 12 - column 18, line 27 -----	1-48

## INTERNATIONAL SEARCH REPORT

International application No.  
PCT/CA2004/000825**Box II Observations where certain claims were found unsearchable (Continuation of item 2 of first sheet)**

This International Search Report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☒ Claims Nos.: 29, 30, 46-48 (in part)  
because they relate to subject matter not required to be searched by this Authority, namely:  
Although claims 29-30, 46-48 are directed to a method of treatment of the human/animal body, the search has been carried out and based on the alleged effects of the compound/composition.
2. ☐ Claims Nos.:  
because they relate to parts of the International Application that do not comply with the prescribed requirements to such an extent that no meaningful International Search can be carried out, specifically:
3. ☐ Claims Nos.:  
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

**Box III Observations where unity of invention is lacking (Continuation of item 3 of first sheet)**

This International Searching Authority found multiple inventions in this International application, as follows:

1. ☐ As all required additional search fees were timely paid by the applicant, this International Search Report covers all searchable claims.
2. ☐ As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this International Search Report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☐ No required additional search fees were timely paid by the applicant. Consequently, this International Search Report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:

**Remark on Protest**

- ☐ The additional search fees were accompanied by the applicant's protest.
- ☐ No protest accompanied the payment of additional search fees.

## INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No  
PCT/CA2004/000825

Patent document cited in search report		Publication date	Patent family member(s)	Publication date
EP 1017370	A	12-07-2000	AT 252892 T	15-11-2003
			AU 9062998 A	29-03-1999
			CA 2301883 A1	18-03-1999
			DE 69819351 D1	04-12-2003
			EA 2806 B1	31-10-2002
			EP 1017370 A1	12-07-2000
			JP 2001515854 T	25-09-2001
			NO 20001290 A	28-04-2000
			US 6599529 B1	29-07-2003
			CN 1277550 T	20-12-2000
			WO 9912524 A1	18-03-1999
WO 03009846	A	06-02-2003	US 2002045646 A1	18-04-2002
			BR 0210971 A	24-08-2004
			CA 2453117 A1	06-02-2003
			EP 1414452 A1	06-05-2004
			JP 2004521955 T	22-07-2004
			WO 03009846 A1	06-02-2003
			US 2003191159 A1	09-10-2003
			US 2004048896 A1	11-03-2004
			US 2004171646 A1	02-09-2004
US 2002045646	A1	18-04-2002	US 6489346 B1	03-12-2002
			US 5840737 A	24-11-1998
			BR 0210971 A	24-08-2004
			CA 2453117 A1	06-02-2003
			EP 1414452 A1	06-05-2004
			JP 2004521955 T	22-07-2004
			WO 03009846 A1	06-02-2003
			US 2003191159 A1	09-10-2003
			US 2004048896 A1	11-03-2004
			US 2004171646 A1	02-09-2004
			AU 3276701 A	24-07-2001
			BR 0107565 A	11-02-2003
			CA 2396159 A1	19-07-2001
			EP 1246622 A1	09-10-2002
			EP 1430895 A1	23-06-2004
			JP 2003519656 T	24-06-2003
			NO 20023313 A	30-08-2002
			PL 357144 A1	12-07-2004
			WO 0151050 A1	19-07-2001
			US 2003118669 A1	26-06-2003
			US 2003144306 A1	31-07-2003
			US 2003215527 A1	20-11-2003
			US 2004058018 A1	25-03-2004
			ZA 200205512 A	10-02-2004
			AU 1907100 A	22-05-2000
			WO 0026185 A2	11-05-2000
US 6489346	B1	03-12-2002	US 5840737 A	24-11-1998
			AU 3276701 A	24-07-2001
			BR 0107565 A	11-02-2003
			CA 2396159 A1	19-07-2001
			EP 1246622 A1	09-10-2002
			EP 1430895 A1	23-06-2004
			JP 2003519656 T	24-06-2003
			NO 20023313 A	30-08-2002
			PL 357144 A1	12-07-2004



## INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/CA2004/000825

Patent document cited in search report	Publication date	Patent family member(s)	Publication date
US 6489346	B1	WO 0151050 A1	19-07-2001
		US 2003191159 A1	09-10-2003
		US 2003118669 A1	26-06-2003
		US 2003144306 A1	31-07-2003
		US 2003215527 A1	20-11-2003
		US 2004048896 A1	11-03-2004
		US 2004058018 A1	25-03-2004
		US 2004171646 A1	02-09-2004
		US 2002045646 A1	18-04-2002
		ZA 200205512 A	10-02-2004
		AU 1907100 A	22-05-2000
		WO 0026185 A2	11-05-2000

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

## PCT

### WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/CA2004/000825

International filing date (day/month/year)  
03.06.2004

Priority date (day/month/year)  
26.06.2003

International Patent Classification (IPC) or both national classification and IPC  
A61K9/48, A61K9/28, A61K9/20, A61K9/50, A61K31/44, A61P1/04

Applicant  
ODIDI, Isa

**1. This opinion contains indications relating to the following items:**

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

**2. FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

**3. For further details, see notes to Form PCT/ISA/220.**

Name and mailing address of the ISA:



European Patent Office  
D-80298 Munich  
Tel. +49 89 2399 - 0 Tx: 523656 epmu d  
Fax: +49 89 2399 - 4465

Authorized Officer

Schifferer, H

Telephone No. +49 89 2399-7472



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**Box No. I Basis of the opinion**

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1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - ☐ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☐ in written format
    - ☐ in computer readable form
  - c. time of filing/furnishing:
    - ☐ contained in the international application as filed.
    - ☐ filed together with the international application in computer readable form.
    - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/CA2004/000825

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**Box No. II    Priority**

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1. ☒ The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

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The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 29, 30, 46-48 (in part)

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 29, 30, 46-48 (in part)
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
  - the written form ☐ has not been furnished
  - ☐ does not comply with the standard
  - the computer readable form ☐ has not been furnished
  - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

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**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-48
	No: Claims	-
Inventive step (IS)	Yes: Claims	-
	No: Claims	1-48
Industrial applicability (IA)	Yes: Claims	1-28, 31-45
	No: Claims	29, 30, 46-48

2. Citations and explanations

**see separate sheet**

- III Non establishment of opinion with regard to novelty, inventive step and industrial applicability
- 1) Claims 29, 30, 46-48 in present description relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(i) PCT).
- V Reasoned statement under Rule 66.2 (a) (ii) with regard to novelty, inventive step or industrial applicability

- 1) Documents
- The following documents (D1-D4) are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1 : EP 1 017 370 A (NYCOMED DANMARK A S) 12 July 2000 (2000-07-12)  
D2 : WO 03/009846 A (UNIV MISSOURI) 6 February 2003 (2003-02-06)  
D3 : US 2002/045646 A1 (PHILLIPS JEFFREY O) 18 April 2002 (2002-04-18)  
D4 : US 6 489 346 B1 (PHILLIPS JEFFREY OWEN) 3 December 2002 (2002-12-03)

Unless otherwise specified, reference is made to the respective cited passages in D1-D4 (see the International Search Report, Form PCT/ISA/210).

- 2) Novelty - Article 33 (1) and (2) PCT
- 2.1) D1 discloses an oral pharmaceutical composition based on modified release multiple units (such as pellets) which are packed in a unit dosage form. This composition comprises:
- a first NSAID-containing fraction of multiple units for quick release of the NSAID
  - a second NSAID-containing fraction of multiple units in the form of coated delayed release multiple units. Proton pump inhibitors (PPI) are listed as further active drug substances, for which such a composition could prove valid.

In the examples 7-9 pellet cores were manufactured which comprised sodium bicarbonate, dibasic calcium phosphate as alkaline agents and lornoxicam. These pellets were left uncoated or were coated with hydroxypropylmethylcellulose (inner coat, outer coat). A mixture of quick release granulate and a delayed release fraction of coated pellet cores were filled in a final unit dosage form.

In D2 a solid pharmaceutical dosage was described which comprises benzimidazole proton pump inhibitors, a primary essential buffer and an optional secondary essential buffer (such as sodium bicarbonate, potassium bicarbonate, magnesium hydroxide, aluminium hydroxide, phosphate derivatives, calcium hydroxide). The two-part tablets provide an inner core with proton pump inhibitors and a primary essential buffer (sodium bicarbonate) and in addition an outer phase with sodium bicarbonate.

D3 discloses two-part tablets comprising a) a core containing omeprazole and sodium bicarbonate/calcium hydroxide and b) an outer phase containing calcium carbonate for the manufacture of a medicament for treating gastric acid disorders.

Solid pharmaceutical dosage forms (tablets, capsules, caplets) are described in D4. These compositions comprise at least one PPI, at least one buffering agent (sodium bicarbonate, potassium bicarbonate, magnesium hydroxide, aluminium hydroxide, sodium carbonate, magnesium hydroxide, phosphate derivatives) and optionally one or more excipients and are used for the manufacture of a medicament for treating gastrointestinal disorders.

- 2.2) D1-D4 do not disclose compositions of at least three multiple unit populations which comprise a) multiple units for the initial dose of the active principle of a proton pump inhibitor, b) multiple units of a basic agent and c) multiple units for a delayed release of said active principle.  
In addition, D1-D4 do not disclose beads/pellets/tablets/granules in a composition comprising a) a population of a pharmaceutical active, b) a population of a basic substance, c) a population of an enteric-coated pharmaceutical active and d) a population of an enteric coated basic substance.
- 2.3) In the light of D1 -D4 (see sections V-1, 2.1, 2.2) and under consideration of section III- 1., the subject-matter of claims 1-48 is considered novel according to Article 33 (1) and (2) PCT, since its corresponding content is not disclosed by D1-D4.
- 3) Inventive Step - Article 33 (1) and (3) PCT
- 3.1) The problem posed in the present application was the development of a composition comprising a proton type inhibitor attaining full inhibition of acid secretion, being chemically stable and ensuring a more precise drug release.

The solution according to the Applicant was an oral pharmaceutical composition comprising multiple populations of at least one of beads, pellets, tablets and granules provided in a capsule, the composition comprising:

- a first population of a pharmaceutical active comprising a pharmaceutical active substance releasable at a first rate (preferable PPI)
- a population of a basic substance
- a second population of a pharmaceutical active comprising a pharmaceutical active substance releasable at a second rate (here also with enteric coating or with a separating layer and an enteric coating optionally)
- a population of a basic substance, wherein the basic substance is released slower than the basic substance of b) (here also with enteric coating or with a separating layer and an enteric coating).

D1 which is regarded closest prior art discloses an oral pharmaceutical composition based on modified release multiple units (such as pellets) which are packed in a unit dosage form. This composition comprises:

- a first NSAID-containing fraction of multiple units for quick release of the NSAID
- a second NSAID-containing fraction of multiple units in the form of coated delayed release multiple units. Proton pump inhibitors are listed as further active drug substances.

In the examples 7-9 pellet cores were manufactured which comprised sodium bicarbonate, dibasic calcium phosphate as alkaline agents and lornoxicam. These pellets were left uncoated or coated with hydroxypropylmethylcellulose (inner coat, outer coat). A mixture of quick release granulate and



a delayed release fraction of coated pellet cores were filled in a final unit dosage form. Besides NSAIDs proton pump inhibitors can be chosen as active agents in the same delayed-release composition.

D1 does not disclose separate multiple units comprising a basic substance.

It appears to be obvious to a person skilled in the art to derive compositions where the basic substances are put in separate pellets besides those pellets for different release pattern for the active principle. Proton pump inhibitors are - for reasons of stability - characteristically packed in compositions together with a basic agent. This can also be recognized from D2-D4.

Unexpected or surprising effects have not been demonstrated for the separate use of pellets containing basic substances besides those containing the proton pump inhibitor in comparison to the combined use of proton pump inhibitors and basic agents in the multiple unit.

- 3.2) Therefore, under provision of III-1., the subject-matter of claims 1-48 is obvious to a person skilled in the art due to general textbook knowledge about compositions of proton pump inhibitors and due to common experience. Thus the aforementioned subject-matter does not meet the requirements of Article 33 (1) and (3) PCT in that extent that it cannot be considered inventive.
- 4) **Industrial Applicability**  
For the assessment of the present claims 29, 30, 46-48 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.
- 5) **Further remarks**

The Applicant's attention is drawn to the fact that the application must not be altered thus that its subject-matter might exceed the contents of the application originally filed (Article 41 (2) PCT).